

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CACR06-818

May 2, 2007

TANGELA MONIQUE JOHNSON
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-2004-3039]

V.

HON. BARRY ALAN SIMS,
JUDGE

STATE OF ARKANSAS

APPELLEE

REBRIEFING ORDERED

A jury found appellant Tangela Johnson guilty of manslaughter and abuse of a corpse, for which she was sentenced to concurrent terms of imprisonment of twenty years and twelve years, respectively. On appeal, she argues that the circuit court erred in prohibiting her counsel's inquiry into the victim's reputation for violence, limiting her counsel's cross-examination of John Scales, and disallowing the testimony of Tosha Hall. Because the abstract and addendum in appellant's brief do not conform with our rules governing the contents of briefs, we order rebriefing.

Rule 4-2(b)(3) of the Rules of the Arkansas Supreme Court and the Arkansas Court of Appeals (2006) provides that whether or not the appellee has called attention to deficiencies in the appellant's abstract or addendum, the appellate court may address the question at any time. In the instant case, there are problems with the abstract and addendum. Rule 4-2(a)(5) states, in pertinent part:

The appellant's abstract or abridgment of the transcript should consist of an impartial condensation, without comment or emphasis, of only such material parts of the testimony of the witnesses and colloquies between the court and counsel and other parties *as are necessary to an understanding of all questions presented to the Court for decision.*

. . .

(Emphasis added.) Appellant's abstract consists of only eleven pages of abstracted testimony from the three-volume record consisting of approximately 977 pages and omits various sections of testimony and colloquies in which the witnesses, counsel, and the trial court addressed the issues raised on appeal that are necessary to an understanding of all questions presented to this court for decision. Additionally, Rule 4-2(a)(8) covers the requirements for the addendum and states in pertinent part:

Following the signature and certificate of service, the appellant's brief shall contain an Addendum which shall include true and legible photocopies of the order, judgment, decree, ruling, letter opinion, or Workers' Compensation Commission opinion from which the appeal is taken, along with any other relevant pleadings, documents, or exhibits essential to an understanding of the case and the Court's jurisdiction on appeal. In the case of lengthy pleadings or documents, only relevant excerpts in context need to be included in the Addendum. Depending upon the issues on appeal, the Addendum may include such materials as the following: a contract, will, lease, or any other document; proffers of evidence; jury instructions or proffered jury instructions; the court's findings and conclusions of law; orders; administrative law judge's opinion; discovery documents; requests for admissions; and relevant pleadings or documents essential to an understanding of the Court's jurisdiction on appeal such as the notice of appeal. . . .

Appellant included in the addendum some forty-seven pages of photocopied transcript related to the challenges to the evidentiary rulings brought up in this appeal, which consist of material parts of the testimony of the witnesses and colloquies between the trial court, counsel, and other parties. That information should have been abstracted as required by Rule 4-2(a)(5) and included in the abstract section of appellant's brief. Additionally, appellant failed to include

in the abstract any proffered testimony related to the issues presented to this court. Without a proffer, we are unable to evaluate the trial court's evidentiary rulings, and thus, any related arguments on appeal cannot be reached. *See Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003).

Pursuant to our rules, we afford appellant an opportunity to cure these deficiencies, and appellant has fifteen days within which to file a substituted abstract, addendum, and brief that conform with our rules. Ark. Sup. Ct. R. 4-2(b)(3). A model brief with examples of proper condensation of testimony can be found on the Arkansas Judiciary website at [http://courts.state.ar.us/clerk/model 20030724.pdf](http://courts.state.ar.us/clerk/model%20030724.pdf). After the filing of a substituted brief, appellee will be afforded an opportunity to revise or supplement its brief. *Id.* We further note that if after the opportunity to cure these deficiencies, appellant fails to file a complying abstract, addendum, and brief, we may affirm for noncompliance with our rules. *Id.*

Rebriefing Ordered.

BIRD and VAUGHT, JJ, agree.